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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/904,154	07/12/2001	Adrianus Josephes van den Nieuwelaar	V0028/260265	2477

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EXAMINER

NELSON, JUDITH A

ART UNIT PAPER NUMBER

3644

DATE MAILED: 06/05/2002

#17

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/904,154

Applicant(s)

VAN DEN NIEUWELAAR ET AL

Examiner

Judith A. Nelson

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-62 is/are pending in the application.
- 4a) Of the above claim(s) 35-62 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 14-19 is/are rejected.
- 7) ☒ Claim(s) 9-13 and 20-34 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Claims 35-62 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a non-elected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 4.

Applicant's election of claims 1-~~35~~ in Paper No. 4 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as

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to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 4 recites the broad recitation "at least one blood vessel", and the claim also recites the blood vessel comprising "at least one jugular vein and at least one carotid artery" which is the narrower statement of the range/limitation. Furthermore, the narrow limitation is grammatically stated incorrectly because it is not stated in the alternative, --at least one jugular vein or at least one carotid artery--.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1, 3, 4, 7, 16, 18 and 19 are rejected under 35 U.S.C. 102(a) as being anticipated by U.S. Patent 6,033,296 (Winkelmolen).

Winkelmolen discloses a method of using a mechanism to cut the neck of a slaughter animal, whereby opening at least one blood vessel inferably due to the

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incision, wherein the incision/opening is made by moving a cutting device/blade (20) along a path (to and fro) and into the neck of the animal from side to side of the slaughtered animal, cutting open inferably a blood vessel (either jugular vein or carotid artery which naturally are located in the neck of an animal). The reference also teaches the use of a blade (20) situated in an apparatus; a method comprising positioning the neck of a slaughter animal (col. 6, lines 4 and 5) by engaging it from what appears to be (as seen in fig 2) the area which extends from the underside of the head of the slaughter animal to the second cervical vertebra, and opening the at least one blood vessel (note col. 4, lines 1-5) via the blade member (20); and wherein the slaughtered animal is left with an incision in the neck and the body being supported by the legs (via structure (8)), above the open wound (as noted in figure 1); and lastly the reference of Winkelmolen discloses a part of the leg of the carcass being extended below the knee joint on a support which is capable of tilting.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 5, 6, 8, 14, 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,033,296 (Winkelmolen).

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Regarding claims 2 and 17, Winkelmolen discloses an apparatus for making a cut in the neck of slaughtered poultry and a method of using an apparatus to implement such a cut, comprising a blade (20), incorporated in the apparatus for making the incision, the reference; however fails to mention the blade being substantially elongate having a sharp, inclined front side and a longitudinal axis, wherein the blade is move along the path substantially in a direction parallel to its longitudinal axis, the at least one blood vessel which is to be opened being located in the path of the inclined side of the blade.

It would have been obvious to a skilled artisan in the art at the time the invention was made to have incorporated any given blade type sufficient enough to cut/open the neck of the slaughtered animal, so as to provide an efficient cutting means for the installation for making a cut in the neck of slaughtered poultry as taught by Winkelmolen.

Pertaining to claims 5 and 6, Winkelmolen discloses the claimed invention except for including in the method that before the at least one blood vessel is opened, the body of the slaughter animal is positioned below the neck of the slaughter animal; nor does the method include the slaughter animal being hung by it's head.

It would have been obvious to one having ordinary skill in the art of Animal Husbandry or Butchery to have supported the slaughter animal by the head, wherein the body would be beneath the opening made by the cutting element, since Applicant has failed to provide any criticality for such a modification.

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Concerning claim 8, Winkelmolen discloses the slaughtered animal carcass being engaged at it's legs on a carrier (8) after having the at least one blood vessel cut (note figure 2).

Regarding claims 14 and 15, While Winkelmolen fully discloses a method of cutting a blood vessel of a slaughtered poultry (the animal has been killed prior cutting), the reference fails to mention the kill being done in a gas atmosphere, however it would have been obvious to one having ordinary skill in the art at the time the invention was made to have supplied a gas atmosphere to the animals being slaughtered for various reasons, for instance to subdue the animals, for less resistance during the slaughtering process, and so as to not have the animal flail about bruising the meat of the animal carcass.

Allowable Subject Matter

Claims 9-13, 20-34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patents 6,033,296; 5,954,575; 5,397,263; Foreign Patents WO 96/16553.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Judith A. Nelson whose telephone number is (703) 305-0984. The examiner can normally be reached on M-Thur. 9:00 a.m. - 6:30 p.m., alt. Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T. Jordan can be reached on 306-4159. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 306-4180.

Judith A. Nelson
Examiner
Art Unit 3644

J. JORDAN
SUPERVISOR
TECHNOLOGY DE. 124 3064

jan 
June 3, 2002